

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
8

9 BEVERLY HARRIS,

10 Plaintiff,

11 v.  
12

13 CAROLYN W. COLVIN,  
14 Commissioner of Social Security,

15 Defendant.  
16

No. 2:15-CV-0254-JTR

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

17 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF  
18 No. 15, 16. Attorney Christopher H. Dellert represents Beverly Harris (Plaintiff);  
19 Special Assistant United States Attorney Leisa A. Wolf represents the  
20 Commissioner of Social Security (Defendant). The parties have consented to  
21 proceed before a magistrate judge. ECF No. 5. After reviewing the administrative  
22 record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for  
23 Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

24 **JURISDICTION**

25 Plaintiff filed an application for Supplemental Security Income (SSI) in  
26 November 2012, alleging disability since January 1, 2007, due to rheumatoid  
27 arthritis, bipolar disorder, PTSD, acid reflux, anxiety, high blood pressure,  
28 insomnia, depression, carpal tunnel syndrome and wrist surgery. Tr. 214-220, 240-

1 241. Plaintiff later amended her onset date to the protective filing date of her  
2 application for SSI, November 8, 2012. Plaintiff's application was denied initially  
3 and upon reconsideration.

4 Administrative Law Judge (ALJ) Elizabeth Watson held a hearing on April  
5 24, 2014, Tr. 41-83, and issued an unfavorable decision on June 19, 2014, Tr. 18-  
6 30. The Appeals Council denied review on July 31, 2015. Tr. 1-6. The ALJ's  
7 June 2014 decision thus became the final decision of the Commissioner, which is  
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
9 action for judicial review on September 22, 2015. ECF No. 1.

#### 10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the  
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
13 here.

14 Plaintiff was born on August 29, 1967, and was 45 years old on the alleged  
15 disability onset date, November 8, 2012. Tr. 214. Plaintiff completed high school  
16 and later completed vocational training as a certified nursing assistant, in an  
17 electrician program, and in cosmetology/instructor. Tr. 55. Plaintiff has past  
18 relevant work as a hair stylist and an office manager of a hair salon. Tr. 56. She  
19 indicated she stopped working in 2007 because of her condition. Tr. 241.

20 At the administrative hearing, the ALJ asked vocational expert Carly  
21 Coughlin a hypothetical which set forth the ALJ's RFC determination, including  
22 the limitations on standing/walking for a total of about two hours in an eight-hour  
23 workday with normal breaks and the need for a sit/stand option. Tr. 76-77. The  
24 vocational expert opined that such a person could perform the jobs of office helper,  
25 electronics' assembler and laundry sorter. Tr. 77. The vocational expert explained  
26 that although light work is defined as standing/walking for the majority of the day,  
27 there are some light-exertion level jobs, like office helper, laundry sorter and  
28 electronics' assembler, which are performed in the seated position for the majority

1 of the time. Tr. 78. The vocational expert indicated she provided jobs in the light  
2 category of physical demand that could be performed sitting or standing. Tr. 78.  
3 The vocational expert further clarified that the jobs of electronics assembler, office  
4 helper and laundry sorter could be performed by one who is able to stand/walk a  
5 maximum of two hours a day. Tr. 79.

6 With respect to the sit/stand option provided in the hypothetical by the ALJ,  
7 the vocational expert specifically indicated the Dictionary of Occupational Titles  
8 (DOT) did not address that area; therefore, she supplemented her testimony with  
9 her 14 years of experience and her education in vocational rehabilitation to find  
10 that the hypothetical individual could perform the light-exertion level jobs she  
11 identified. Tr. 80.

#### 12 STANDARD OF REVIEW

13 The ALJ is responsible for determining credibility, resolving conflicts in  
14 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
15 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*,  
16 although deference is owed to a reasonable construction of the applicable statutes.  
17 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ  
18 may be reversed only if it is not supported by substantial evidence or if it is based  
19 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial  
20 evidence is defined as being more than a mere scintilla, but less than a  
21 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant  
22 evidence as a reasonable mind might accept as adequate to support a conclusion.  
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to  
24 more than one rational interpretation, the court may not substitute its judgment for  
25 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*  
26 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by  
27 substantial evidence will be set aside if the proper legal standards were not applied  
28 in weighing the evidence and making the decision. *Browner v. Secretary of Health*

1 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If evidence supports the  
 2 administrative findings, or if conflicting evidence supports a finding of either  
 3 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 4 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

### 5 **SEQUENTIAL EVALUATION PROCESS**

6 The Commissioner has established a five-step sequential evaluation process  
 7 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 8 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
 9 through four, the burden of proof rests upon the claimant to establish a *prima facie*  
 10 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
 11 burden is met once a claimant establishes that a physical or mental impairment  
 12 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
 13 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
 14 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
 15 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
 16 in the national economy which claimant can perform. *Batson v. Commissioner of*  
 17 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make  
 18 an adjustment to other work in the national economy, a finding of "disabled" is  
 19 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### 20 **ADMINISTRATIVE DECISION**

21 The ALJ found Plaintiff had not engaged in substantial gainful activity since  
 22 November 8, 2012, the alleged onset date. Tr. 20. At step two, the ALJ  
 23 determined Plaintiff had the following severe impairments: degenerative disc  
 24 disease – cervical and thoracic spine; bilateral knee osteoarthritis; depressive  
 25 disorder NOS; bipolar disorder NOS; anxiety disorder NOS; and status-post  
 26 traumatic brain injury. TR. 20.

27 At step three, the ALJ found Plaintiff did not have an impairment or  
 28 combination of impairments that meets or medically equals the severity of one of

1 the listed impairments. Tr. 22. The ALJ assessed Plaintiff's RFC and determined  
2 she could perform a restricted range of light exertion level work. Tr. 24-25. The  
3 ALJ found Plaintiff can lift and carry 20 pounds occasionally and 10 pounds  
4 frequently; can stand and/or walk no more than two hours with no sitting limits in  
5 an eight-hour day; must be allowed to alternate sitting or standing positions as  
6 needed throughout the day while remaining on task; can occasionally climb ramps  
7 or stairs; must never climb ladders, ropes, or scaffolds; can occasionally stoop,  
8 kneel, crouch, and crawl; must avoid concentrated exposure to extreme cold and  
9 extreme heat; must avoid concentrated exposure to excessive noise; must avoid  
10 concentrated exposure to operational control of moving machinery and hazardous  
11 machinery; must have no exposure to unprotected heights; can understand and  
12 carry out simple instructions; and is limited to occasional, superficial contact with  
13 the public, coworkers and supervisors. Tr. 24-25.

14 At step four, the ALJ found Plaintiff was unable to perform her past relevant  
15 work as a cosmetologist and salon manager. Tr. 29. However, at step five, the  
16 ALJ determined that, considering Plaintiff's age, education, work experience and  
17 RFC, and based on the testimony of the vocational expert, Plaintiff was capable of  
18 making a successful adjustment to other work that exists in significant numbers in  
19 the national economy, including the jobs of laundry sorter, electronic equipment  
20 assembler and office helper. Tr. 29-30. The ALJ thus concluded Plaintiff was not  
21 under a disability within the meaning of the Social Security Act at any time from  
22 November 8, 2012, the alleged onset date, through the date of the ALJ's decision,  
23 June 19, 2014. Tr. 30.

## 24 ISSUES

25 The question presented is whether substantial evidence supports the ALJ's  
26 decision denying benefits and, if so, whether that decision is based on proper legal  
27 standards. Plaintiff contends the ALJ erred by (1) failing to provide clear and  
28 convincing reasons supported by substantial evidence for finding Plaintiff was not

1 fully credible; and (2) failing to explain the basis for her conclusion at step five  
2 that Plaintiff was capable of performing the jobs of laundry sorter, electrical  
3 equipment assembler and office helper despite the assessed restrictions on  
4 standing/walking and the need to alternate sitting or standing.

## 5 DISCUSSION

### 6 A. Plaintiff's Credibility

7 Plaintiff first contends the ALJ erred by failing to provide valid reasons for  
8 finding Plaintiff not fully credible in this case. ECF No. 15 at 4-12.

9 It is the province of the ALJ to make credibility determinations. *Andrews v.*  
10 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be  
11 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231  
12 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying  
13 medical impairment, the ALJ may not discredit testimony as to the severity of an  
14 impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157  
15 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the  
16 ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and  
17 convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v.*  
18 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient:  
19 rather the ALJ must identify what testimony is not credible and what evidence  
20 undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*,  
21 12 F.3d 915, 918 (9th Cir. 1993).

22 In this case, the ALJ found Plaintiff's medically determinable impairments  
23 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
24 statements concerning the intensity, persistence and limiting effects of the  
25 symptoms were not entirely credible. Tr. 25.

26 The ALJ determined the objective medical evidence of record did not fully  
27 support the level of limitation claimed by Plaintiff. Tr. 26. A lack of supporting  
28 objective medical evidence is a factor which may be considered in evaluating an

1 individual's credibility, provided it is not the sole factor. *Bunnell v. Sullivan*, 347  
2 F.2d 341, 345 (9th Cir. 1991); *see also Carmickle v. Comm'r, Soc. Sec. Admin.*,  
3 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a  
4 sufficient basis for rejecting the claimant's subjective testimony."); *Lingenfelter v.*  
5 *Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007) (in determining credibility, ALJ may  
6 consider "whether the alleged symptoms are consistent with the medical  
7 evidence").

8 As noted by the ALJ, Plaintiff testified to a number of physical symptoms  
9 and limitations at the hearing, Tr. 58-75, many of which she had never mentioned  
10 to care providers and, thus, there was a lack of objective medical evidence  
11 concerning these alleged symptoms and limitations. Tr. 26. Moreover, despite  
12 various physical impairments and symptoms noted in the evidence of record,  
13 Arthur Rodriguez, M.D., and Frederick Comrie, a rehabilitation specialist,  
14 examined Plaintiff in October 2012 and found no atrophy, fasciculations  
15 (involuntary muscle contraction), or gross deformity in the cervical spine, Tr. 316;  
16 Plaintiff displayed 5/5 strength, intact sensation to light touch and pinprick in the  
17 left upper extremity, and symmetric deep tendon reflexes, Tr. 316; Plaintiff's  
18 cervical x-rays from May 2011 revealed osteophyte formation at all levels but no  
19 uncovertebral or facet osteoarthritis, Tr. 316; Dr. Huisinga's November 2012  
20 examination revealed 5/5 strength in the lower extremities, intact sensation to light  
21 touch, full knee extension bilaterally, no laxity with stress maneuvers, and no  
22 effusions, redness, or warmth of either knee joint, Tr. 343; therapists noted  
23 Plaintiff was improving and able to do more at home, Tr. 581; and, in February  
24 2014, Dr. Hirshmann indicated Plaintiff had 5/5 strength in her lower extremities,  
25 intact sensation, full bilateral extension, and no effusions, redness, or warmth of  
26 either joint, Tr. 722. Tr. 26-27.

27 The ALJ also indicated the objective evidence of record did not support the  
28 level of limitation Plaintiff claimed with respect to her alleged mental impairments

1 and their corresponding symptoms. Tr. 28. The ALJ noted the record reflects  
2 Plaintiff reported her mood was “pretty good” and her energy level was fine in  
3 October 2012, Tr. 358; her mood was pretty good and her sleep, appetite, energy  
4 and concentration were stable in November 2012, Tr. 347; clonazepam was very  
5 helpful when she felt overwhelmed, Tr. 347; she was doing pretty good even with  
6 additional stressors in January 2013, Tr. 431; she was doing well overall and  
7 continued to juggle multiple responsibilities with her family in August 2013, Tr.  
8 759; and, in November 2013, she continued to use clonazepam for anxiety, but  
9 only sparingly, and remained active with her children and home activities, Tr. 741-  
10 742. Tr. 28.

11 As indicated by the ALJ, the evidence of record does not support the  
12 symptoms and limitations alleged by Plaintiff in this case. It was thus appropriate  
13 for the ALJ to conclude Plaintiff’s was not entirely credible because Plaintiff’s  
14 alleged level of limitation was not consistent with the medical evidence.

15 The ALJ also mentioned Dr. Rodriguez and Mr. Comrie recommended only  
16 conservative treatment for Plaintiff’s allegations of symptoms and pain. Tr. 26.  
17 Evidence of “conservative treatment” is sufficient to discount a claimant’s  
18 testimony regarding the severity of an impairment. *Parra v. Astrue*, 481 F.3d 742,  
19 751 (9th Cir. 2007); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)  
20 (conservative treatment suggests a lower level of both pain and functional  
21 limitation).

22 Dr. Rodriguez and Mr. Comrie recommended exercise therapy and proper  
23 pillow support. Tr. 26, 317. Dr. Huisinga administered bilateral cortisone and  
24 Synvisc injections, Tr. 342, which Plaintiff reported “really helped,” Tr. 426. Tr.  
25 26-27. The record also reflects Plaintiff underwent several physical therapy  
26 sessions which seemed to help. Tr. 27. These methods of treatment are considered  
27 conservative. *See, e.g., Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008)  
28 (describing “physical therapy” as conservative treatment); *Gallo v. Comm’r of Soc.*

1 *Sec. Admin.*, 2010 WL 545848 at \*14 (N.D. Cal. 2010) *aff'd*, 449 F. App'x 648  
2 (9th Cir. 2011) (defining an epidural steroid injection as conservative treatment);  
3 *Morris v. Colvin*, 2014 WL 2547599 at \*4 (C.D. Cal. 2014) (finding the ALJ  
4 properly discounted credibility when plaintiff received conservative treatment  
5 consisting of physical therapy, use of TENS unit, chiropractic treatment, Vicodin,  
6 and Tylenol with Vicodin). The ALJ's statement that Plaintiff had been  
7 recommended only conservative treatment provides another clear and convincing  
8 reason for discounting Plaintiff's testimony in this case.

9 The ALJ also stated that Plaintiff's activities were inconsistent with her  
10 assertion of disability. Tr. 26-27. It is well-established that the nature of daily  
11 activities may be considered when evaluating credibility. *Fair v. Bowen*, 885 F.2d  
12 597, 603 (9th Cir. 1989). The ALJ indicated records from December 2012 state  
13 Plaintiff chopped wood "regularly" and had sustained a hand injury in June 2012  
14 when her hand was caught between her splitting maul and a truck's tailgate. Tr.  
15 26, 286. The ALJ further noted a July 2013 report revealed she was on her feet  
16 "all day" cutting hair. Tr. 27, 761. This level of activity is not consistent with  
17 Plaintiff's claim of disabling limitations.

18 The ALJ additionally indicated the record reflected Plaintiff continued to  
19 provide salon services as she had in the past after her alleged onset date. Tr. 27,  
20 761. Employment after the alleged onset of disability date may be a factor in an  
21 ALJ's credibility determination. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d  
22 1219 (9th Cir. 2009) (finding that "[t]he ALJ made specific findings in support of  
23 his decision to discount [plaintiff's] testimony," including that plaintiff "recently  
24 worked as a personal caregiver for two years [after her disability onset date], and  
25 has sought out other employment since then"). The fact that the record reflects  
26 Plaintiff continued to provide salon services after her alleged onset date, as  
27 documented by the ALJ, is a valid reason for the ALJ to discount Plaintiff's  
28 assertion of disabling symptoms.

1 Finally, the ALJ stated Plaintiff had not taken the recommended anti-  
2 inflammatory medication on a regular basis, suggesting her symptoms were not  
3 particularly problematic. Tr. 27, 761. In assessing a claimant's credibility, an ALJ  
4 properly relies upon "'unexplained or inadequately explained failure to seek  
5 treatment or to follow a prescribed course of treatment.'" *Tommasetti*, 533 F.3d at  
6 1039 (quoting *Smolen*, 80 F.3d at 1284). A claimant's statements may be deemed  
7 less credible "if the level or frequency of treatment is inconsistent with the level of  
8 complaints, or if the medical reports or records show that the individual is not  
9 following the treatment as prescribed and there are no good reasons for this  
10 failure." SSR 96-7p. The ALJ did not err by relying, in part, upon Plaintiff's  
11 failure to comply with medical recommendations in concluding Plaintiff was not  
12 fully credible in this case.

13 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
14 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
15 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
16 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
17 determining whether the ALJ's decision is supported by substantial evidence and  
18 may not substitute its own judgment for that of the ALJ even if it might justifiably  
19 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After  
20 reviewing the record, the Court finds that the reasons provided by the ALJ for  
21 discounting Plaintiff's subjective complaints are clear, convincing, and fully  
22 supported by the record. Accordingly, the ALJ did not err by finding Plaintiff's  
23 allegations were not entirely credible.

24 **B. Step Five**

25 Plaintiff next asserts the ALJ erred at step five of the sequential evaluation  
26 process by determining Plaintiff's RFC was consistent with the ability to perform  
27 the jobs of laundry sorter, electronic equipment assembler and office helper. ECF  
28 No. 15 at 12-16.

1 If Plaintiff has established a prima facie case of disability by demonstrating  
2 she cannot return to her former employment, the burden shifts to the ALJ to  
3 identify specific jobs existing in substantial numbers in the national economy that  
4 Plaintiff can perform despite her identified limitations. *Embrey v. Bowen*, 849  
5 F.2d 418, 422 (9th Cir. 1988) (“If a claimant shows that he or she cannot return to  
6 his or her previous job, the burden of proof shifts to the Secretary to show that the  
7 claimant can do other kinds of work.”). The ALJ can satisfy this burden by either  
8 (1) applying the grids, or (2) considering the testimony of a vocational expert.  
9 *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9th Cir. 1988).

10 The ALJ’s RFC determination is not specifically challenged by Plaintiff in  
11 this case. *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (“We review  
12 only issues which are argued specifically and distinctly in a party’s opening brief.”  
13 (citations omitted)); *Carmickle*, 533 F.3d at 1161 n.2 (“issues not argued with  
14 specificity in briefing will not be addressed”). Accordingly, the ALJ’s uncontested  
15 RFC determination, that Plaintiff is capable of performing light exertion level work  
16 with additional exertional and nonexertional limitations, including the restriction of  
17 standing and/or walking no more than two hours in an eight-hour day and the need  
18 to be allowed to alternate sitting or standing, is not at issue.

19 Given a hypothetical which included all the limitations assessed in the ALJ’s  
20 RFC determination, vocational expert Carly Coughlin testified that such a person  
21 could perform the jobs of office helper, electronics’ assembler and laundry sorter.  
22 Tr. 77. The vocational expert specifically stated that these light exertion level jobs  
23 could be performed by one who is able to stand/walk a maximum of only two  
24 hours a day. Tr. 79. With respect to the sit/stand option provided in the  
25 hypothetical by the ALJ, the vocational expert specifically indicated her opinion,  
26 which concluded that the hypothetical individual would be able to perform the jobs  
27 of office helper, electronics’ assembler and laundry sorter, was based on her  
28 education and experience. Tr. 80.

1 Plaintiff argues the DOT's descriptions of the jobs identified by the  
2 vocational expert are inconsistent with the level of Plaintiff's functioning as  
3 determined by the ALJ. Because the DOT states that the jobs of laundry sorter,  
4 electrical equipment manager, and office helper could require "walking or standing  
5 to a significant degree," the Court agrees there is an apparent conflict between the  
6 vocational expert's testimony and the DOT requirements with respect to these light  
7 exertion level jobs.

8 The Commissioner will take administrative notice of job information in the  
9 DOT, but may also rely on information provided by a vocational expert; neither  
10 source automatically trumps the other. 20 C.F.R. § 416.966(d); SSR 00-4p; *Barker*  
11 *v. Shalala*, 40 F.3d 789, 795 (6th Cir. 1994) (The DOT "is not the sole source of  
12 admissible information concerning jobs"); *Whitehouse v. Sullivan*, 949 F.2d 1005,  
13 1007 (8th Cir. 1991) ("The Secretary may take administrative notice of any reliable  
14 job information, including . . . the services of a vocational expert." (internal  
15 quotation marks and citations omitted)). The DOT itself states that it is not  
16 comprehensive, but provides only occupational information on jobs as they have  
17 been found to occur, but they may not coincide in every respect with the content of  
18 jobs as performed in particular establishments or at certain localities. *Johnson v.*  
19 *Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1995) (holding that an ALJ may rely on  
20 vocational expert testimony that contradicts the DOT when the record contains  
21 persuasive evidence to support the deviation). When there is a conflict between  
22 the DOT and a vocational expert's testimony, the ALJ may rely on the vocational  
23 expert's testimony when he provides a reasonable explanation of the conflict based  
24 on his experience. *Johnson*, 60 F.3d at 1435.

25 Here, the ALJ specifically addressed the contradiction between the DOT and  
26 the vocational expert testimony. Tr. 30. The ALJ indicated the vocational expert's  
27 testimony concerning Plaintiff's ability to perform the three jobs, despite the  
28 limitation on standing, was based on the vocational expert's vocational experience.

Tr. 30. At the administrative hearing, the vocational expert explained that, based on her education and experience, there are some light exertion level jobs, like office helper, laundry sorter and electronics' assembler, which are performed in the seated position for the majority of the time. Tr. 78-79. Therefore, the identified jobs could be performed by one who is able to stand/walk a maximum of only two hours a day. Tr. 78-79.

With respect to the sit/stand option provided in the ALJ's RFC determination, there is no conflict between the vocational expert's testimony and the DOT. *See Buckner-Larkin v. Astrue*, 450 Fed. Appx. 626, 628 (9th Cir. 2011) (stating the DOT is silent regarding sit/stand options). Nevertheless, the need for a sit/stand option was specifically addressed by the vocational expert. The vocational expert indicated her testimony that the identified jobs could be performed by the hypothetical individual, despite the need for a sit/stand option, was based on her 14 years of experience as a Voc-Rehab counselor and her education (Master's degree in vocational rehabilitation). Tr. 80. The ALJ properly relied upon the vocational expert's testimony in this regard.

Based on the foregoing, substantial evidence supports the ALJ's conclusion that Plaintiff could perform the jobs identified by the vocational expert. The ALJ did not err at step five of the sequential evaluation process by relying on the testimony of the vocational expert to conclude Plaintiff could perform the jobs of office helper, electronics' assembler and laundry sorter, jobs which exist in significant numbers in the national economy. Tr. 30.

### CONCLUSION

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error. Accordingly, **IT IS ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 16**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant** and the file shall be **CLOSED**.

DATED May 20, 2016.



A handwritten signature in black ink, appearing to be "M" followed by a stylized flourish.

---

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE